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ABSTRACT

This paper discusses 14 issues related to gender equity in intercollegiate athletics, including: (1) the cost dilemma, in which institutions have to cut men's sports to introduce women's sports; (2) equal pay for the coaches of men's and women's teams; (3) the gender of coaches, namely men coaching women's teams; (4) peer harassment among students; (5) the rising level of participation in intercollegiate athletics; (6) the advancement of minority women in intercollegiate athletics; (7) women in the sports media; (8) women in athletics administration; (9) women sports officials; (10) women athletic trainers; (11) the rising number of lawsuits in intercollegiate sports; (12) the regulation of player agents; (13) athletic opportunities for individuals with physical disabilities; and (14) medical issues. Thirty-three footnotes contain numerous references. (MDM)

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Emerging Issues and Opportunities
Prospective Analysis

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Introduction

Title IX/Gender Equity and other participant initiated legal issues in the year 2000. Between yesterday, today, and the year 2000, the changes that take place in athletics will be as profound as the dunk and three point shot in basketball and the spike in volleyball.

Many say that it (Title IX) is too costly. Others see the mandate as one that will do any one or all of the following:

Pit player against coach
Pit coach against player
Pit player/coach against their institution
Pit women against men; girls against boys
Pit academics against athletics

Still others see it as a wonderful opportunity, a means to balance the scale. Then there are those who feel we are at a point in time where the colleges and universities of this nation should call for a "time out" and review the role of college sports; in fact, review and reevaluate intercollegiate sport, and then, reorganize and rebuild it.

In preparing this paper I solicited input from college administrators at the Division I, II and III level and researched various references. The responses I received from these people, supplemented by the literature I researched, made it clear to me that the emerging issues and opportunities as the result of Tittle IX/Gender Equity mandates, are to a large degree, in the following areas:

The Dilemma of Cost
Equal Pay
Gender Coaching
Peer Harassment
Rising Participation
Advancement of Minority Women
Women in the Media
Women in Athletic Administration
Women Officials
Women Athletic Trainers
Lawsuits
Player Agents
Physically Disabled
Medical Issues

Issue I: Resolving the Cost Dilemma

How can an educational institution respond to Title IX/Gender Equity mandates when the bottom line in responding to expansion of athletic programs for women is how much it will cost? The costs for expanding include:

- Adding sports programs, i.e. coaches, staff, equipment, and operational dollars to cover scheduling, travel, officials, etc.
- Costs for additional support/clerical staff, athletic trainers and sports information personnel
- Possible facility renovation, or even new facilities
- Additional scholarship dollars for those institutions who award scholarships

In 1993-94 the average athletic department in Division I-AA, I-AAA, II, and III ran a deficit. Just how much longer can we continue deficit spending? And what lies out there on the Horizon?

According to Karol Kahrs, Associate Director of Athletics at the University of Illinois, we can look forward to:

- Rising costs
- The cry for cost containment
- Lack of institutional support
- Lack of State support

Merrily Dean Baker, Director of Athletics at Michigan State University has suggested that we might also see a recession in television revenues, as well as a decreased commitment from the corporate sector as they look at other venues to support and give their advertising dollars to.

The number of cases of reinstatement and/or the addition of women's sports as a result of Title IX litigation are well documented and on the rise. Some such cases include:

- Texas Tech to add women's soccer in 1994; another women's sport in 1995-96
- Cohen vs. Brown
- Haffner vs. Temple
- Blair vs. Washington State University
- Women's gymnastics vs. Brockport University
- Adjusted salary budgets for men's and women's basketball programs to be equitable (Sports Law, August 1994, p. 96)

The question then becomes, do you drop and/or cap men's sports in order to maintain the budget bottom line. Is this a viable means to meet /achieve Gender Equity? Can we continue to lead the athletic lifestyle we currently lead?

Here is a look at what is happening; typical scenarios of what institutions are doing in an effort to comply:

- University of California at Berkley adding more sports programs for women in an effort to comply with Title IX and Gender Equity issues. The three sports to be added-- women's golf (1994-95), women's water polo (1995-96), and women's lacrosse (1996-97)[1]
- University of Wisconsin, LaCrosse, a Division III institution, is capping all men's sports, eliminating approximately 60 spots
- University of Illinois, drops swimming for men. As a result, eight members of the men's team filed a suit against the University because it dropped the men's swimming team and kept the women's as a cost saving measure. A federal judge favored the university's action, stating "... the cuts in Illinois sports program were intended to protect the University's female athletes, not discriminate against men."[2]

Now in 1994 there is rising concern for, and legal attempts being made to protect men's nonrevenue sports, i.e. wrestling, gymnastics and swimming. Roy Johnson, men's gymnastics coach at the University of Massachusetts at Amherst and President of the National Association of Collegiate Gymnastic Coaches, has stated their is a potential for loss of quality athletes to participate in Olympic competition in those "nonrevenue" sports as a result of this current trend.

The trend is that of "reverse discrimination" and the level of concern for this practice and the number of lawsuits being filed are on the rise. This practice is likely to continue throughout the next few years. As Robert Budd, Executive Director of the National Wrestling Coaches has asserted "...there is not one case where women have not won. There hasn't been one case where the men have won."[3]

As a result of the elimination of men's sports at the University of Illinois, a potential back lash exists; that of an internal public relations problem. According to Anne Goodman James, President of the College Swim Coaches Association of America, "A stigma often accompanies discontinuation of a men's program; blame is directed at women in such cases,..."[4] this will create factions, bad, nonproductive working environments.

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[1] Sport Law Monthly, NCAA, July 1994, pg. 4
[2] From the Gym to the Jury, Vol. 5. November 2, 1993, pg. 10
[3] National Collegiate Athletic Association of Athletics, (NCAA) October 24, 1994, pg. 21
[4] Ibid.

Led by the Men's National Wrestling Coaches Association, a coalition of nonrevenue sports coaches have presented a position paper to the U.S. Congress. According to T.J. Kerr, wrestling coach at California State University, their goal is "...to maintain or increase opportunities for male athletes to compete while increasing opportunities for female athletes to compete under Title IX/Gender Equity rules". Kerr continued. "...[and to] impress upon the Office of Civil rights (OCR) that it should be just as concerned about preserving opportunities for the growing number of male student-athletes who are being told their institutions are dropping a sport, as it is about enforcing equal opportunity for women."[5]

Issue II: Equal Pay

"During the first part of the 1990's, the key issue in women's intercollegiate athletics has been Title IX's application to,, and impact upon, women student athletes' participation in varsity sports. During the remainder of this decade, the spotlight will be upon the federal equal Pay Act's standards and enforcement..."[6]

The following are some examples of cases that would support the above statement:

- Oklahoma State University. The women's golf coach "...filed a lawsuit charging discrimination against [the University] because she is paid $35,712 to coach women's golf while [the] men's coach...receives $63,000"[7]
- Stanley vs. University of Southern California. Marianne Stanley claims she should have been paid comparably to the school's head men's basketball coach, George Raveling. at the time Raveling reportedly earned approximately $150,000. The University's best offer to Stanley during negotiations was $96,000.
- Pam Bowers vs. Baylor University. Bowers alleges that Baylor discriminated against her by permitting significant disparities between men's and women's sports in such areas as salaries, scholarships, equipment, playing and practice time, transportation and road trip housing.
- Zimmerman vs. San Jose State University. Mary Zimmerman lost her job after a merger of the separate men's and women's programs into one department of athletics. The University's position was that the move was "...purely motivated by financial concerns." Zimmerman contended that "...she was terminated in retaliation for demanding that the University work harder to comply with Title IX and gender equity principles." The final result, Zimmerman was to receive $328,000 as the result of a settlement with the University. The University's position on the settlement, "...they had to take factors such as costs into consideration."[8]

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[5] id. pg. 1
[6] Naylor, Mel, "Legal Corner", Athletic Administration, October, 1994
[7] From the Gym to the Jury, Vol. 5. Nov. 2, 1993, pg. 3
[8] Curtis, Ted; Sports Law Monthly, July 1994

According to Glenn M. Wong and Carol A. Barr, "Compensation discrimination claims in intercollegiate athletics seem to be o the increase."[9]

The Equal Employment Opportunity Commission uses the following criteria in comparing the coaching of men's and women's sports:

- The sport
- Number of games, matches, etc.
- Number of students coached
- Length of season
- Time in practice

Under an Equal Pay Act or Title IX claim, a court could consider the overall responsibilities of coaching, including:

- Speaking engagements
- Promotional responsibilities
- Fund raising responsibilities
- Pressures to win
- Experience
- Coaching honors received
- Level of recruiting a coach performs

Yet difficulty exists and there is need for clarity which will probably take "...several court decisions along with the interpretation that the courts will apply, to sort our this issue..."[10]

"...Potential assistance may be provided if the Title IX Athletics Investigators Manual is rewritten. Rewriting the coaches' compensation section may help define what constitutes sex discrimination. In the meantime, athletic administrators should pay special attention to wording used in job descriptions of various sport coaches. If the job descriptions are the same, the institution should pay the coaches comparably, or have a seniority, merit or other system in place to show that discrepancy in salary is not based on gender."[11]

Issue III: Gender Coaching--Potential sexual harassment could prove costly

"A series of highly publicized incidents of abuse and negligent behavior in athletics has focused...on men who coach women and girls."[12] For instance:

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[9] Wong, Barr; "Pay Attention", Athletic Business, October, 1994, pg. 10
[10] Ibid. pg. 14
[11] id. pg. 14
[12] Bradley, Michael; Athletic Management, Aug/Sept 1994, pg. 19

- A champion swimming coach at a Florida university was fired for allegedly fondling team members and using sexually suggestive and foul language[13]
- A University's women's volleyball coach was forced to resign after the school accused him of having an affair with one of his players
- A women's track and field coach was fired because he spent the night at the house of one of his team members[14]

A remark, an attitude, physical contact. Was it derogatory, sexist, an assault? There is confusion as to intent, boundaries and interpretations of such issues in the minds of many male coaches and their administrators. The size of the problem has been broached, but it is, and will continue to be an issue of the future.

"The 1992 Supreme Court ruling in Christine Franklin vs. Gevinnett County (PA) Public Schools now requires schools to talk about it [sexual harassment]."[15] Many universities have codes and policies that suggest limitations or ban dating between professors and students, and coaches and students, an example, the University of Texas for Women. "University Administration cannot assume that coaches are aware of the proper way to behave when coaching member of the opposite sex."[16] Codes of conduct, policies of sexual harassment must be developed and ethical behavior insisted upon. It is advisable to have, for women's sports, an assistant coach who is female if the head coach is male. While it is not necessarily a new issue, it is likely to become a growing source of legal concern, hence, athletic/university administrators need to understand the issue, how it can affect their programs and how to prevent sexual harassment from occurring. Especially on three levels: between employees and their supervisors; between student-athletes and their coaches; and between student-athletes and other students.[17]

Issue IV: Peer Harassment

Peer harassment is still an emerging issue. "Two different lawsuits were brought against Petaluma (CA) City School District for student to student sexual harassment. One is pending and one settled out of court for $20,000. In a Minnesota case, Katy Lyle received a $15,000 settlement from Duluth Central High School for enduring two years of sexual harassment while administrators failed to act upon her complaints. [Thus far cases have differed on the school's liability, however,]...the athletic administration may also be liable and should recognize the

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[13] Ibid. pg. 14
[14] id. pg. 14
[15] id. pg. 21
[16] id. pg. 23
[17] Ruedlinger, Dough; "Tangled Web", Athletic Business, August 1994, pg. 11

power and social status of student-athletes and take steps to educate them about sexual harassment."[18]

Issue V: Participation on the Rise

While participation seems to be on the rise, women as coaches and administrators are inching "up" and "down".

A recent study conducted by R. Vivian Acosta and Linda Jean Carpenter shows positive signs for women. What follows is an overview of their findings.[19]

Participation Opportunities for Women:

- The average number of teams offered has increased to 7.22 teams per school, the highest since 1990
- In 1994, all three divisions show an increase in the number of sport offerings for their female population
- Basketball, volleyball, tennis and cross country continue to be the four most popular sports for women

Status of Women as Administrators:

- 21% of women's programs are headed by a female administrator. An increase from the 15.9% found in 1990
- Women hold 33.3% of all administrative jobs in women's sports programs; in 1990 it was 15.9%
- Today there are fewer programs totally lacking women than in any of the last ten years. In 24.4% of women's programs there is no female administrator involved
- The average number of females involved in athletic administration per school is 0.96 up from 0.83 in 1992

Status of Women as Coaches:

- 49.4% of the coaches of women's teams are females, up from 47.3% in 1990. In 1972 when Title IX was enacted, more than 90% of women's teams were coached by females
- About 6,371 head coaching jobs exist in 1994 for coaches of women's NCAA teams, an increase of 176 jobs from 1992. During that period, the number of jobs

[18] Ibid. pg. 14

[19] Acosta, Vivian, Carpenter; Women's Sports Foundation, Fall 1994 (partial reprint) for detailed copy of study, send SASE to Acosta & Carpenter, c/o Brooklyn College, Brooklyn, NY 11210

held by men coaching women's teams increased by 146; the number of women holding these jobs increased by 273

- In the last 10 years, the number of head coaching jobs for women's teams has increased by 1,167. Women hold only 285 more jobs, while me hold 766 more. However, over the past four years, women have gained 441 jobs compared to 162 for men
- In programs where the head administrator is a female, 57.1% of the coaches of women's teams are female, compared to 47.4% if the head administrator is male
- Women hold 62.1% of the paid assistant coaching positions in Division I athletics, up from 59/8% in 1992

High school participation by girls in 1993-94 was up 127,266. This increase, according to Bruce Howard, spokesman for the National Federation of State High School Association, "...is up in part due to an increase in opportunities...while schools have budget problems and some sports have been cut, schools are finding ways to keep programs afloat, the numbers continue to increase."[20]

The following are some quick facts provided by the Women's Sports Foundation:[21]

- High School/college enrollments usually approximate a 50/50 ratio, but only 36% of all high school athletes are girls; 34% of all college athletes are women
- Less than 33% of collegiate athletic scholarship dollars are given to female student athletes
- Male college student-athletes receive $179 million more each year
- Less than 24% of college sport operating budgets go to women's sports
- Less than 18% of athletic dollars go toward recruitment of female athletes
- 92% of local TV news sports coverage is given to men's sports. Women's sports receive 5% and gender neutral topics 3%
- Less than 1% of coaches of college men's sports are women
- Less than 49% of coaches of women's sports are women
- Less than 5% of coaches are from racial minorities
- Less than 14% of college athletic directors are women. Of that 14% there are only four female director at the Division I-A level, and recently two female athletic directors left their positions and were replaced by men

Issue VI: Advancement of Minority Women

Opportunities for advancement for minority women involved in athletics are difficult. "Black women have to deal with the double whammy--racism and sexism--in predominantly white

[20] Associate Press Article (missing citation)
[21] Women's Sports Foundation, Eisenhower Park; East Meadow, NY 11554-1000; phone 800-227-3988

institutions. Although Title IX opened the doors of opportunity for women in sport, stereotypes, ignorance, societal attitudes toward differences, and discriminatory institutional practices have limited minority women from participating in all sports and have limited employment in athletic leadership positions such as athletic administrators, coaches, officials, commentators, athletic trainers and sports information directors...very few minorities are in decision making positions and to sensitize individuals who may have been socialized that differences are negative or 'less than' can be challenging. For minority women to enjoy the benefits of Title IX, there must be individuals in positions that are knowledgeable, committed and sensitive to the difference and the hiring of minority women"[22]

Issue VII: Women in the Media

in the early 80's, "...there were but a handful of women in sports reporting. Now there are over 500 women across the country in the sports media field...but the still face many hurdles, some of which include:

- Less respect: Gayle Plant, Senior Coordinator of Media Services for the U.S. Olympic Committee said 'within the sports media business there are men who do not treat women as seriously as we should be treated and look at us as if we don't know what sports are all about
- Double standards: Actions taken by a male member of the media would be interpreted as proper, but when taken by a female are questioned
- Lack of support: It is difficult to decide which problems to bring to the attention of management, for fear of being perceived as a complainer
- Salary discrepancy: Salaries of even the top women in the field fall sort of their male counterparts. Gayle Gardner, the highest paid woman in the business, earns $250,000 a year (1992 figure), while the highest paid men earn upwards of $2 million
- Glass ceiling: '...there is an obvious glass ceiling that you can't overcome...I think we will have a woman president before we will have a woman on a major network doing play-by-pay and making lots of money' (pt. Golf/Tennis exception)

Frank Deford, former senior writer of Sports Illustrated and 6 time Sportswriter of the year said "...it is a matter of breaking down a culture and that is eminently harder to do. We (men) think we need you (women) for procreation and recreation, but we don't need you for sports.'[23]

There are striking similarities between the previous examples and the realities of women athletic administrators.

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[22] Journal of Physical Education Recreatin and Dance (JOPERD) March, 1992, pg. 58
[23] Rubarth, Lisa, JOPERD, March 1992, pp. 54-55

Issue VIII: Women in Athletic Administration

Historically, and prior to Title IX, if there was an athletic program for girls or women "...almost all collegiate women's athletic programs were administered by women athletic directors and primarily because they had separate programs. Today, very few women's programs remain separate from the men's...and when consolidation occurred, the merged programs are almost exclusively led by a male"[24]

The percentage of female athletic directors is 14%, but at the NCAA Division I-A level there are only four female directors in charge of the total athletic program, and that number just doubled this year (1994). Recently two female athletic directors left their positions only to have their positions filled by men (Luther College and St. Louis University). I am afraid that this is a sign of the future. The recent political scene echoed similar results across the nation, where women were not returned to their elected positions.

Issue IX: Women Officials

"Prior to Title IX, most athletic contests between women, regardless of sport, were officiated by women. ...with the advent of Title IX there exists a great increase in men officiating women's (girls) sports almost to the reverse in some sports, i.e. basketball, softball, volleyball. During 1990 75% of Affiliated Board of Officials (ABO) registered officials, and 54% of the ABO registered volleyball officials were male. IN 1990-91 the PAC 10 WBO (women's basketball) officials roster listed 43 officials; 30 male, 13 female. Not one female was listed as the lead official for women's PAC 10 conference games."[25]

Issue X: Today's Women Athletic Trainers

"Job opportunities today have drastically changed the image and potential for the future. The early women were frustrated and discouraged when few opportunities existed for employment. They were viewed as athleic trainers for women, not women athletic trainers and were never considered as viable candidates for vacancies in men's athletic programs..."[26]

Other issues that are emerging quickly in the athletic venue (aside from Title IX/Gender Equity) include: Lawsuits against institutions; Player Agents; the Physically Disabled; and Medical Issues. In the following paragraphs I will briefly look into each of them.

Issue XI: Lawsuits

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[24] Fox, Connie JOPERD, March 1992, pp. 48-49
[25] Casey, Ann , JOPERD, March 1992, pp. 45-46
[26] Anderson, Marcia, JOPERD, March 1992, pp. 42-43

Lawsuits against educational institutions for sports-related injuries to participants are occurring with increased frequency. "Playing Participant Injured by Non-Playing Participant. Lawsuits involving one player vs. another are but one segment of the growing trend to obtain compensation for sports-related injuries from outside sources such as coaches, institutions and teams. Some examples of recent claims against non-playing participants include:

In Lamorie V. Warner Pacific College, a college coach was sued for allowing an injured athlete to play. The claim alleged that the coach acted in reckless disregard of the player's condition by forcing his premature return to the playing field.

In another case, a jury awarded a six-figure verdict to a student who had heat stroke during football practice. The claim alleged negligence on behalf of the coach for conducting practice while the temperature was above 100 degrees, and failing to provide reasonable breaks.

Non-Playing Participant Injured by Playing Participant or Venue. Non-playing 'participants', using our broadened definition, can sue for injuries received in the restricted area, such as those resulting from a collision when a player runs off the court of field. IN a recent case, a student assistant received a six-figure settlement when injured on the sidelines by a playing participant. Others at risk include cheerleaders, trainers and media personnel. ...there has been a marked increase in non-playing participant claims, and it may easily become the fastest growing claims segment of participant legal liability in the future.

Playing Participant Injured by Defect in Venue. Players' lawsuits alleging venue defects are among the most common among the four liability scenarios. Often these claims are related to the playing surface, where injuries have resulted from a player tripping on an inconsistency in the field, such as a raised seam or cutout.

Inadequate layout or set-up of playing fields has also resulted in claims. In one recent case, a baseball player brought a suit against avenue, claiming he was injured do to the lack of padding on the outfield wall. In our current legal environment, venues will always be easy targets for participant legal liability claims, but of the four liability scenarios, lawsuits in this area are the most preventable.

Historical Precedent. Years ago, assumption of risk was the guideline in participant litigation. Until recently, many athletes, as well as the judiciary system, believed that injuries were part of the risk that was assumed in participation. for example, penalties for inappropriate behavior were handed out by the game officials, not the courts. Now, participants, as well as the legal system, are beginning to view intercollegiate and amateur sports as lucrative business, and injured athletes as individuals who could lose potential career earnings. Courts have recently stated that all sports should have limits of acceptable violence; participants do not necessarily consent to behavior which is reckless or willful.

Solutions. All athletics directors should be concerned with increasing legal action by participants. A first step in controlling such claims is to discuss with your coaches, administrators and staff guidelines pertaining to the well-being of all participants. Areas for review should include: the playing area; proper equipment and its condition; and supervision/direction given to participants. Mandate participants sign waiver agreements--agreements restrict the rights athletes may have to sue institutions for injuries. Waivers should extend to include not only participation, but also training, practice and other activities.[27]

Issue XII: Regulation of Player Agents

Currently, at least a few states are considering bills that are "...aimed at agents who misguide a mislead student-athletes trying to make the transition from intercollegiate to professional athletics."[28] A bill in Kentucky stipulates that illegal practices are a class D felony. With bills, regulations will follow suits by ill advised, unhappy, mistreated student-athletes. IN addition, "...the Kentucky bill prohibits agents from offering anything of value, including free or discounted legal services, to an employee of an educational institution in return for the referral of clients by the employee" (Kentucky House Bill 713 (2) (1) (e))

Issue XIII: Physically Disabled

Virtually no varsity athletic opportunities are offered to the physically disabled, despite the fact that over 10% of the college student population have disabilities. Although progress has been documented and there is an increase in opportunities for women and minorities to participate, opportunities for athletes with disabilities lags far behind. Those individuals with disabilities "...have experienced problems of stereotyping, prejudice and stigmatization."[29]

Title IX did not adequately affect opportunities for such athletes, hence Public Law 95-606, the Amateur Sports Act of 1978, made provisions for equal opportunity. "...individuals with disabilities and Public Law 93-112 section 504 (and amendments to the Rehabilitation Act) specifies non-discrimination on the basis of handicap. the law states that equal opportunity and equal access must be provided for persons with disabilities, specifically including physical education services, intramural activities and athletics."[30]

This is a prime area for future opportunity, probably as a result of legal suits.

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[27] Murphy, Bob; The Athletic Administrator, Oct. 1994, pg. 55

[28] Sports Law Monthly 1994, pg. 6
[29] JOPERD, March, 1992, pg. 57
[30] Ibid. pg. 58

Issue XIV: Medical Issues in Sports

A player dies following a "walk through" practice and a $5.5 million suit is filed. A football player at Catholic University died after suffering an asthma attack. A lawsuit was filed against the University, hospital and doctor who administered a physical examination.[31]

A Soccer player sues Gilford College and a local physician alleging improper treatment of a fractured wrist and also claimed that the college discriminated against her because she was female. She stated that "...treatment was delayed 5 days because she was female, while it responded immediately to the injury of a male student...that she was allowed to continue to play, which further manifested her injury to the extent that she will never be able to play sports again."[32]

Summary:

In closing, we are experiencing progress in participation by female student-athletes, in particular at the collegiate level. This growth will continue, but eventually level off. The concern will soon turn to focus on implementation of Title IX/Gender Equity at the high school, junior high and middle school levels.

Nagging financial concerns, screams of reverse discrimination, equal pay, gender coaching and various individual participant generated suits are going to take "center court".

And least we loose sight of the fact, although discrimination exists, women in athletics have made great strides in seeking equality in the work force. But "...we must do more to openly confront sexist comments, language, policies, procedures and practices that place women in a subordinate role, exclude women from physical places, and limit their input into the decision making process."[33]

[31] From the Gym to the Jury, Vol. 5. November 2, 1993, pg. 6
[32] Ibid. pg. 7
[33] Anderson, Marcia, JOPERD, March 1992, pp. 42-43